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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,955	07/25/2006	Yoshinobu Watanabe	10873.1897USWO	3465
53148	7590	03/14/2008	EXAMINER	
HAMRE, SCHUMANN, MUELLER & LARSON P.C. P.O. BOX 2902-0902 MINNEAPOLIS, MN 55402			DASGUPTA, SOUMYA	
ART UNIT	PAPER NUMBER		2176	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/586,955	WATANABE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	SOUMYA DASGUPTA	2176	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 July 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/25/2006, 8/21/2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

1. This is the initial office action based on 11/586,955 application filed on 7/25/2006.

The application has a foreign application with a priority date of (JP) 8/26/2004. Claims 1 and 5-9, as originally filed, are currently pending and have been considered below.

Claims 2-4 are canceled. Claims 1, 6, and 8 are independent claims.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 and 5-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

#### **Claims 1 and 5:**

The language of the claims raise a question as to whether the claims are directed merely to an abstract idea that would not result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

In summary, Claim 1 recites a “system” comprising “*an ultrasonic detecting portion*” (see Line 2), “*an image display portion*” (see Line 4), “*a control portion*” (see Line 8), “*a function in which a pop-up menu opens*” (see Line 11), and “*a function in which an alternative in the pop-up menu is selected*” (see Line 13). Each of these elements of the “system” are software per se in that none of these elements comprise

computer hardware. Thus, the “*system*” recited in Claim 8 is not within a statutory class as defined in 35 U.S.C. 101 (*i.e.*, a “process,” a “machine,” a “manufacture” or a “composition of matter”).

Accordingly, Claim 1 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

Dependent claims:

Claim 5 merely recite further definitions of the elements recited in Claim 1 or additional functions performed by the “*system*” of Claim 1. Thus, the “*system*” recited in Claim 5 is not within a statutory class as defined in 35 U.S.C. 101 (*i.e.*, a “process,” a “machine,” a “manufacture” or a “composition of matter”).

Accordingly, Claim 5 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

**Claims 6 and 7:**

The language of the claims raise a question as to whether the claims are directed merely to an abstract idea that would not result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

In summary, Claim 6 recites a “*system*” comprising “*an ultrasonic detecting portion*” (see Line 2), “*an image display portion*” (see Line 4), “*a control portion*” (see Line 8), “*a function in which a pop-up menu opens*” (see Line 11), and “*a function in which an alternative in the pop-up menu is selected*” (see Line 13). Each of these

elements of the “system” are software per se in that none of these elements comprise computer hardware. Thus, the “system” recited in Claim 6 is not within a statutory class as defined in 35 U.S.C. 101 (*i.e.*, a “process,” a “machine,” a “manufacture” or a “composition of matter”).

Accordingly, Claim 1 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

Dependent claims:

Claim 7 merely recite further definitions of the elements recited in Claim 6 or additional functions performed by the “system” of Claim 6. Thus, the “system” recited in Claim 5 is not within a statutory class as defined in 35 U.S.C. 101 (*i.e.*, a “process,” a “machine,” a “manufacture” or a “composition of matter”).

Accordingly, Claim 7 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

**Claims 8 and 9:**

The language of the claims raise a question as to whether the claims are directed merely to an abstract idea that would not result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

In summary, Claim 8 recites a “system” comprising “*an ultrasonic detecting portion*” (see Line 2), “*an image display portion*” (see Line 4), “*a control portion*” (see Line 8), “*a function in which a pop-up menu opens*” (see Line 11), and “*a function in*

*which an alternative in the pop-up menu is selected"* (see Line 13). Each of these elements of the "system" are software per se in that none of these elements comprise computer hardware. Thus, the "system" recited in Claim 8 is not within a statutory class as defined in 35 U.S.C. 101 (*i.e.*, a "process," a "machine," a "manufacture" or a "composition of matter").

Accordingly, Claim 8 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

Dependent claims:

Claim 9 merely recite further definitions of the elements recited in Claim 8 or additional functions performed by the "system" of Claim 8. Thus, the "system" recited in Claim 5 is not within a statutory class as defined in 35 U.S.C. 101 (*i.e.*, a "process," a "machine," a "manufacture" or a "composition of matter").

Accordingly, Claim 9 fails to recite statutory subject matter as defined in 35 U.S.C. 101.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al (US 2004/0254465; Patent Issue Date: Dec 16, 2004; Patent Filing Date: Nov 22, 2001; hereafter Sano) in view of Dutta et al (US 6,717,600; Patent Issue Date: Apr 6, 2004; Patent Filing Date: Dec 15, 2000; hereafter Dutta).

**Claim 1:**

Sano discloses **an ultrasonic diagnosis system comprising: an ultrasonic detecting portion that transmits an ultrasonic wave to a subject and receives a reflected wave therefrom;** (Abstract → Sano discloses an ultrasonic diagnostic equipment that which projects ultrasonic signals into a patient, and which generates an ultrasonic image on the basis of reflection echoes within the patient. It is well known in the art that ultrasound machines have mechanisms used for "detecting portion that transmits an ultrasonic wave to a subject and receives a reflected wave therefrom.")

**an image display portion that has a diagnostic image display region for displaying a diagnostic image based on an image signal from the ultrasonic detecting portion and displays a setting button and a cursor of a pointing device**

**for making a selection of a setting condition;** (Abstract → Sano discloses “an image display portion that has a diagnostic image display region for displaying a diagnostic image based on an image signal from the ultrasonic detecting portion” in that the workflow system controls the equipment operations including generation of the ultrasonic image. Fig 3 → Sano discloses “displays a setting button and a cursor of a pointing device for making a selection of a setting condition” in that user can select settings for the diagnostic system on a menu.)

**and a control portion that has a function of setting the setting condition based on the selection of the setting condition;** (Fig 3 → Sano discloses “function of setting the setting condition based on the selection of the setting condition” in that user can select settings for the diagnostic system on a menu.)

**wherein the ultrasonic diagnosis system has a function in which a pop-up menu opens by locating the cursor on the setting button,** (Figs 12 (A-C) → Sano discloses “function in which a pop-up menu opens by locating the cursor on the setting button” in that the user can use the pop-up menu to select functions by using a cursor.)

**and a function in which an alternative in the pop-up menu is selected by locating the cursor on the alternative** (Figs 12 (A-C) → Sano discloses “a function in which an alternative in the pop-up menu is selected by locating the cursor on the alternative” in that the user has choices of selection to choose from on the pop-up menu. The examiner interprets “alternative” to mean selections on the pop-up menu.)

Sano does not appear to explicitly disclose **the alternative that is selected last is confirmed by moving the cursor to a region outside the pop-up menu.**

Dutta discloses **the alternative that is selected last is confirmed by moving the cursor to a region outside the pop-up menu.** (Fig 7 → Dutta discloses “the alternative that is selected last is confirmed by moving the cursor to a region outside the pop-up menu” in that the icons are able to be selected when the cursor moves in a direction that is in proximity with the desired icon. When the cursor is in proximity of the icon, the icon activates and changes focus. The examiner notes that if an icon can be activated by the cursor moving in its specific direction, then it is obvious to one of ordinary skill in the art to have an icon activated by moving the cursor away from it because directional movements for cursors are well known in the art.)

Sano and Dutta are analogous art because they are from the same field of endeavor of selecting icons.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Sano and Dutta before him or her, to incorporate ultrasonic diagnostic equipment with selectable menu options, as disclosed by Sano, with a directional proximity selector, as disclosed by Dutta .

The motivation for doing so would have been to allow users to select an icon without clicking on it.

Therefore, it would have been obvious to combine Dutta with Sano to obtain the invention as specified in the instant claim.

**Claim 6:**

Sano discloses **an ultrasonic diagnosis system comprising: an ultrasonic detecting portion that transmits an ultrasonic wave to a subject and receives a reflected wave therefrom;** (Abstract → Sano discloses an ultrasonic diagnostic equipment that which projects ultrasonic signals into a patient, and which generates an ultrasonic image on the basis of reflection echoes within the patient. It is well known in the art that ultrasound machines have mechanisms used for " detecting portion that transmits an ultrasonic wave to a subject and receives a reflected wave therefrom.")

**an image display portion that has a diagnostic image display region for displaying a diagnostic image based on an image signal from the ultrasonic detecting portion and displays a setting button and a cursor of a pointing device for making a selection of a setting condition;** (Abstract → Sano discloses "an image display portion that has a diagnostic image display region for displaying a diagnostic image based on an image signal from the ultrasonic detecting portion" in that the workflow system controls the equipment operations including generation of the ultrasonic image. Fig 3 → Sano discloses "displays a setting button and a cursor of a

pointing device for making a selection of a setting condition” in that user can select settings for the diagnostic system on a menu.)

**and a control portion that has a function of setting the setting condition based on the selection of the setting condition;** (Fig 3 → Sano discloses “function of setting the setting condition based on the selection of the setting condition” in that user can select settings for the diagnostic system on a menu.)

**wherein the ultrasonic diagnosis system has a function in which a pop-up menu opens by locating the cursor on the setting button,** (Figs 12 (A-C) → Sano discloses “function in which a pop-up menu opens by locating the cursor on the setting button” in that the user can use the pop-up menu to select functions by using a cursor.)

**and a function in which an alternative in the pop-up menu is selected by locating the cursor on the alternative** (Figs 12 (A-C) → Sano discloses “a function in which an alternative in the pop-up menu is selected by locating the cursor on the alternative” in that the user has choices of selection to choose from on the pop-up menu. The examiner interprets “alternative” to mean selections on the pop-up menu.)

Sano does not appear to explicitly disclose **the alternative that is selected last is confirmed by moving the cursor rightward, leftward, horizontally, upward, downward or vertically in the selected alternative in the pop-up menu.**

Dutta discloses **the alternative that is selected last is confirmed by moving the cursor rightward, leftward, horizontally, upward, downward or vertically in the selected alternative in the pop-up menu.** (Fig 7 → Dutta discloses “the alternative that is selected last is confirmed by moving the cursor rightward, leftward, horizontally, upward, downward or vertically in the selected alternative in the pop-up menu” in that the icons are able to be selected when the cursor moves in a direction that is in proximity with the desired icon.)

Sano and Dutta are analogous art because they are from the same field of endeavor of selecting icons.

At they time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Sano and Dutta before him or her, to incorporate ultrasonic diagnostic equipment with selectable menu options, as disclosed by Sano, with a directional proximity selector, as disclosed by Dutta .

The motivation for doing so would have been to allow users to select an icon without clicking on it.

Therefore, it would have been obvious to combine Dutta with Sano to obtain the invention as specified in the instant claim.

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al (US 2004/0254465; Patent Issue Date: Dec 16, 2004; Patent Filing Date: Nov 22, 2001; hereafter Sano) in view of Alexander (US 6,049,325; Patent Issue Date: Apr 11, 2000; hereafter Alexander).

**Claim 8:**

Sano discloses **an ultrasonic diagnosis system comprising: an ultrasonic detecting portion that transmits an ultrasonic wave to a subject and receives a reflected wave therefrom;** (Abstract → Sano discloses an ultrasonic diagnostic equipment that which projects ultrasonic signals into a patient, and which generates an ultrasonic image on the basis of reflection echoes within the patient. It is well known in the art that ultrasound machines have mechanisms used for "detecting portion that transmits an ultrasonic wave to a subject and receives a reflected wave therefrom.")

**an image display portion that has a diagnostic image display region for displaying a diagnostic image based on an image signal from the ultrasonic detecting portion and displays a setting button and a cursor of a pointing device for making a selection of a setting condition;** (Abstract → Sano discloses "an image display portion that has a diagnostic image display region for displaying a diagnostic image based on an image signal from the ultrasonic detecting portion" in that the workflow system controls the equipment operations including generation of the

ultrasonic image. Fig 3 → Sano discloses “displays a setting button and a cursor of a pointing device for making a selection of a setting condition” in that user can select settings for the diagnostic system on a menu.)

**and a control portion that has a function of setting the setting condition based on the selection of the setting condition;** (Fig 3 → Sano discloses “function of setting the setting condition based on the selection of the setting condition” in that user can select settings for the diagnostic system on a menu.)

**wherein the ultrasonic diagnosis system has a function in which a pop-up menu opens by locating the cursor on the setting button,** (Figs 12 (A-C) → Sano discloses “function in which a pop-up menu opens by locating the cursor on the setting button” in that the user can use the pop-up menu to select functions by using a cursor.)

**and a function in which an alternative in the pop-up menu is selected by locating the cursor on the alternative** (Figs 12 (A-C) → Sano discloses “a function in which an alternative in the pop-up menu is selected by locating the cursor on the alternative” in that the user has choices of selection to choose from on the pop-up menu. The examiner interprets “alternative” to mean selections on the pop-up menu.)

Sano does not appear to explicitly disclose **the alternative that is selected last is confirmed by keeping the cursor in the selected alternative for a certain period of time.**

Alexander discloses **the alternative that is selected last is confirmed by keeping the cursor in the selected alternative for a certain period of time.** (Col 3, lines 9-15 →

Alexander discloses “the alternative that is selected last is confirmed by keeping the cursor in the selected alternative for a certain period of time” in that the dwell time is used for selection of an icon by cursor.)

Sano and Alexander are analogous art because they are from the same field of endeavor of selecting icons.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Sano and Alexander before him or her, to incorporate ultrasonic diagnostic equipment with selectable menu options, as disclosed by Sano, with a dwell time selector, as disclosed by Alexander.

The motivation for doing so would have been to allow users to select an icon without clicking on it.

Therefore, it would have been obvious to combine Alexander with Sano to obtain the invention as specified in the instant claim.

**Claim 9:**

Sano discloses the limitations of Claim 8.

Sano also discloses selection of items in a pop-up menu (Figs 12 (A-C))

Sano does not appear to explicitly disclose **the ultrasonic diagnosis system which has a function of setting a time period until the pop-up menu opens by locating the cursor of the pointing device on the setting button drawn on a screen.**

Alexander discloses **the ultrasonic diagnosis system which has a function of setting a time period until the pop-up menu opens by locating the cursor of the pointing device on the setting button drawn on a screen.** (Col 3, lines 9-15 →

Alexander discloses “a function of setting a time period until the pop-up menu opens by locating the cursor of the pointing device on the setting button drawn on a screen” in that the dwell time is used for selection of an icon by cursor.)

Sano and Alexander are analogous art because they are from the same field of endeavor of selecting icons.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Sano and Alexander before him or her, to incorporate ultrasonic diagnostic equipment with selectable menu options, as disclosed by Sano, with a dwell time selector, as disclosed by Alexander.

The motivation for doing so would have been to allow users to select an icon without clicking on it.

Therefore, it would have been obvious to combine Alexander with Sano to obtain the invention as specified in the instant claim.

6. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al (US 2004/0254465; Patent Issue Date: Dec 16, 2004; Patent Filing Date: Nov 22, 2001; hereafter Sano) in view of Dutta et al (US 6,717,600; Patent Issue Date: Apr 6, 2004; Patent Filing Date: Dec 15, 2000; hereafter Dutta) in further view of Alexander (US 6,049,325; Patent Issue Date: Apr 11, 2000; hereafter Alexander).

**Claim 5:**

Sano discloses the limitations of Claim 8.

Sano also discloses selection of items in a pop-up menu. (Figs 12 (A-C)).

Dutta discloses directional proximity selecting mechanisms. (Fig 7)

Sano and Dutta do not appear to explicitly disclose **the ultrasonic diagnosis system which has a function of setting a time period until the pop-up menu opens by locating the cursor of the pointing device on the setting button drawn on a screen.**

Alexander discloses **the ultrasonic diagnosis system which has a function of setting a time period until the pop-up menu opens by locating the cursor of the pointing device on the setting button drawn on a screen.** (Col 3, lines 9-15 →

Alexander discloses “a function of setting a time period until the pop-up menu opens by

locating the cursor of the pointing device on the setting button drawn on a screen" in that the dwell time is used for selection of an icon by cursor.)

Sano, Dutta, and Alexander are analogous art because they are from the same field of endeavor of selecting icons.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Sano, Dutta, and Alexander before him or her, to incorporate ultrasonic diagnostic equipment with selectable menu options, as disclosed by Sano, with a directional proximity selection mechanism, as disclosed by Dutta, and with a dwell time selector, as disclosed by Alexander.

The motivation for doing so would have been to allow users to select an icon without clicking on it.

Therefore, it would have been obvious to combine Alexander and Dutta with Sano to obtain the invention as specified in the instant claim.

**Claim 7:**

Claim 7 corresponds to Claim 5.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SOUMYA DASGUPTA whose telephone number is (571)272-7432. The examiner can normally be reached on M-Th 9am-7pm, F 9am-1pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on 571-272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD

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